

STATE OF MICHIGAN
COURT OF APPEALS

JILL MARIE-JAKUC OHLAND and JON E.
OHLAND,

UNPUBLISHED
August 6, 2009

Plaintiffs-Appellants,

v

No. 285722
Washtenaw Circuit Court
LC No. 07-000138-CK

OLD REPUBLIC NATIONAL TITLE
INSURANCE COMPANY and HAROLD E.
TETER, Trustee of the HAROLD E. TETER
TRUST AGREEMENT,

Defendants,

and

CONSUMERS ENERGY COMPANY,

Defendant-Appellee.

Before: Owens, P.J., and Servitto and Gleicher, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the circuit court's order granting defendant Consumers Energy Company summary disposition. We affirm, and decide this appeal without oral argument in accordance with MCR 7.214(E).

This case concerns a disputed easement. In February 1959, defendant Harold Teter granted Consumers a "right of way" to construct, operate and maintain a gas line on a parcel of Salem Township property in Washtenaw County; Consumers recorded its interest in July 1959 and has operated a gas line on the property since that year. In January 2001, defendant Teter Trust conveyed to plaintiffs by warranty deed an approximately three-acre portion of the nearly 40-acre Salem Township parcel, over part of which Consumers had constructed its gas line. In anticipation of constructing a house, plaintiffs in 2005 obtained a survey of their property, during which the surveyor found markers identifying the presence of an easement. Plaintiffs then ascertained that Consumers claimed a gas line easement over the property and that the line ran where they had hoped to build their house. Plaintiffs filed this action, alleging in their complaint that they had to relocate their building site, incurring expenses they should not have to pay. The

complaint raised trespass and ejectment counts against Consumers, and other counts against their vendor and the title insurance company.¹

Consumers sought summary disposition under MCR 2.116(C)(8), maintaining that it had a priority interest as a matter of law given the undisputed fact that plaintiffs purchased their property subject to Consumers's validly recorded easement. Plaintiffs replied that the "right of way" simply qualified as too indefinite in its description to constitute a valid conveyance entitled to priority status under the recording statutes, and that the purported conveyance lacked sufficient specificity to comply with the statute of frauds. At the summary disposition hearing, the circuit court initially rejected plaintiffs' suggestion that "this is merely a right-of-way and is not a formal easement," finding "that the document itself is specific with regard to identifying a parcel of land, being section nine, township one, south range seven east, in . . . Salem Township, Washtenaw County." The circuit court further reasoned as follows that it would grant Consumers summary disposition:

[The 1959 conveyance to Consumers] goes beyond what . . . could be construed to be merely a right-of-way, because it doesn't merely provide access to the property to traverse the property. It provides full rights and authority of the party of the second part, that being Consumers, the successors and assigns to enter at all times . . . upon said . . . premises for the purpose of constructing, repairing, removing, enlarging . . . gas mains, lines, and the like. If this were merely a right-of-way, . . . that language would not be included. The language . . . certainly assists the Court in determining that this is more than just a mere right-of-way; that it provided Consumers Energy with, in fact, an easement on . . . the premises.

Secondly, the document was in fact recorded and . . . plaintiff [sic] was certainly placed on notice of the fact that there were easements of record, either by way of a title policy search or . . . plaintiffs['] own research could have discovered . . . that there was some encumbrance on the property. Certainly, the discussion which appears to be at issue now, as to the specific location of that easement, where the line runs as it relates to the purchase and/or then the construction of . . . plaintiffs' home is something that is not the responsibility of Consumers Energy. It's certainly the responsibility of . . . plaintiff [sic] in order to determine where it was located

Thirdly, I don't find that there's a violation of the statute of frauds. . . . [T]he document itself is clearly signed by the parties in interest. It specifically describes the property. Therefore, the motion for summary disposition is granted, as there is no claim by . . . plaintiff [sic] against . . . defendant.

Plaintiffs challenge the circuit court's summary disposition ruling, which we review de novo. *Kuznar v Raksha Corp*, 481 Mich 169, 175; 750 NW2d 121 (2008).

¹ The other defendants are not parties to this appeal.

Summary disposition is proper under MCR 2.116(C)(8) if the nonmoving party “has failed to state a claim on which relief can be granted.” Such claims must be so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. In reviewing the outcome of a motion under MCR 2.116(C)(8), we consider the pleadings alone. We accept the factual allegations in the complaint as true and construe them in a light most favorable to the nonmoving party. [*Id.* at 176 (some internal quotation omitted).]

Plaintiffs insist that absent any recorded metes and bounds description of the gas main’s location, the 1959 grant to Consumers contained insufficient detail to constitute a valid conveyance of a property interest or warrant enforcement under the statute of frauds, especially in light of the facts that the entire Salem Township parcel consists of nearly 40 acres and plaintiffs own only three acres. The 1959 document, entitled “Right of Way,” describes the burdened Salem Township property in Washtenaw County as, “The West one-half (½) of the West one-half (½) of the Southeast one-quarter (¼) of Section nine (9), Township one (1) South, Range seven (7) east.” The document states that it conveys to Consumers “the easement and right to lay, construct and maintain gas mains . . . in, through and across” the described property. The document additionally specifies, “The route to be taken by said gas mains across said land being more specifically described as follows: One gas main to run in a Northeasterly and Southwesterly direction in, under, through and across said above described land.”

The circuit court correctly found that the “right of way” grant to Consumers constituted an easement, which is subject to recording as a real property conveyance under MCL 565.29 and MCL 565.35. *Peaslee v Saginaw Co Drain Comm’r*, 365 Mich 338, 343-344; 112 NW2d 562 (1961) (characterizing as an easement a document entitled “release” because “the release itself contains words describing it as a ‘conveyance’ sufficient to grant an ‘easement’”). Plaintiffs correctly observe that in some circumstances an indefinite property interest description in a purported transfer may potentially invalidate the conveyance. *Johnston v Michigan Consolidated Gas Co*, 337 Mich 572, 577-578; 60 NW2d 464 (1953). However, plaintiffs ignore the existence of Michigan case law recognizing that an easement is not rendered invalid merely because, at the time of the conveyance, the precise location of the conveyance had not yet been determined. *Johnston, supra* at 578; see also *Greve v Caron*, 233 Mich 261; 206 NW 334 (1925) (rejecting a claim that “the words ‘together with the right of an alley in the rear’ . . . are too indefinite to create an easement by grant,” and invoking the principle that “in case the way is by grant, and the terms thereof locate the same by clear intendment, equity will not be so blind as to fail to recognize the evident and necessary designation of the way”). After reviewing the language of the easement conveyed in this case, we detect no indefiniteness that would justify a finding of invalidity; to the contrary, the easement plainly permits a lone northeast-to-southwest pipeline for specified gas main purposes, and further identifies with adequate specificity the range, township, section, quarter, and portion of the quarter where the easement is located.² Moreover, plaintiffs cite no controlling authority in support of the proposition that a conveyance must contain a metes and bounds description, or that an easement holder must file documentation

² The written easement, duly signed, also satisfies the statute of frauds, MCL 566.106.

more specifically describing the location of an easement after the easement holder occupies it. *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008) (observing that an appellant may not leave it to this Court to locate authority supporting his position).

Because plaintiffs do not suggest that Consumers exceeded the scope of its easement, and because plaintiffs have conceded that Consumers recorded its easement in conformity with MCL 565.29 long before they obtained their interest in the property, we conclude that the circuit court properly granted summary disposition of plaintiffs' trespass and ejectment claims pursuant to MCL 2.116(C)(8). We lastly note that after reviewing the complaint, which attached among other documents the easement that Consumers recorded in 1959, and the transcript containing the circuit court's bench opinion granting summary disposition, we find unsupported plaintiffs' suggestion that the court looked beyond the pleadings in granting Consumers's motion.³

Affirmed.

/s/ Donald S. Owens
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher

³ We decline to consider Consumers's request for sanctions under MCR 7.216(C), which it neglected to properly file in a motion for sanctions. MCR 7.211(C)(8).